



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

AIR EVA EMS INC
C/O MISTY STINER
PO BOX 106
WEST PLAINS MO 65775

Respondent Name

STANDARD FIRE INSURANCE CO

Carrier's Austin Representative Box

Box Number 05

MFDR Tracking Number

M4-13-3206-01

MFDR Date Received

August 1, 2013

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "According to the United States Code Title 49, 41713, the Airline Deregulation Act (ADA) of 1978 states that individual states cannot regulate the prices, routes or service of the air ambulance industry, therefore, it is inappropriate that air ambulance services be subject to state workers' compensation allowance and should be reimbursed at 100% of billed charges."

Amount in Dispute: \$17,642.16

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The Date of Service is June 12, 2012. The Requestor filed its Request for Medical Fee Dispute Resolution on August 1, 2013. The Request is not timely under 28 TAC 133.307(c) (1). The Requestor has waived its right to medical fee dispute resolution and the Division should dismiss the Request and take no further action."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
June 12, 2012	A0431 and A0436	\$17,642.16	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for health care providers to pursue a medical fee dispute.
2. Federal Preemption of Medical Fee Dispute Resolution under 28 Texas Administrative Code §133.307 Chapter 133 — General Medical Provisions — Subchapter D. Dispute and Audit of Bills by Insurance Carriers.

3. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits

- 683 – The EOB did not contain a denial description
- 953-201 – The EOB did not contain a denial description

Issue

1. Does the Federal Aviation Act, in particular the Airline Deregulation Act of 1978 section 41713 of Title 49 U.S.C.A., preempt the state statutes concerning timely filing?
2. Did the requestor waive the right to medical fee dispute resolution?

Findings

1. The division issued a memorandum dated March 28, 2013 stating: "Note that Congress adopted the Airline Deregulation Act of 1978 (the "ADA"), which prohibits states from adopting or enforcing regulations which relate to a price, route, or service of air carriers as defined by the ADA. See 49 USC §40102(a) (2). Specifically, 49 U.S.C. §41713(b) states that "[e]xcept as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart."
The division finds that the one year timely filing deadline addressed in 28 Texas Administrative Code §133.307 (c) (1) is not preempted. As a result, the division will review the dispute pursuant to 28 Texas Administrative Code §133.307 (c) (1).
2. 28 Texas Administrative Code §133.307(c) (1) states: "Timeliness. A requestor shall timely file with the Division's MDR Section or waive the right to MDR. The Division shall deem a request to be filed on the date the MDR Section receives the request. (A) A request for medical fee dispute resolution that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute." The date of the services in dispute is June 12, 2012. The request for medical dispute resolution was received in the Medical Dispute Resolution (MDR) section on August 1, 2013. This date is later than one year after the date(s) of service in dispute. Review of the submitted documentation finds that the disputed services do not involve issues identified in §133.307, subparagraph (B). The Division concludes that the requestor has failed to timely file this dispute with the Division's MDR Section; consequently, the requestor has waived the right to medical fee dispute resolution.

Conclusion

The Division finds that the requestor has waived the right to medical fee dispute resolution for the services in dispute. For that reason, the merits of the issues raised by both parties to this dispute have not been addressed.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

October 31, 2013
Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, 37 *Texas Register* 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with any other required information specified in 28 Texas Administrative Code §141.1(d).